

Amend Sections 830 and 830.1 of the Revenue and Taxation Code to clarify the distinction between the two penalties related to states assessees: 1) failure to provide information needed to develop unit values, and 2) failure to provide information in sufficient detail needed to allocate the unit value so determined.

Source: Honorable John Chiang

Under existing law, state assessees must annually provide certain information to the Board of Equalization. Failure to provide this information results in the application of a penalty. The calculation of the penalty varies depending upon the type of information found to be deficient. In the case of a state assessee who fails to provide information *needed to develop* the state assessee's unit value, the penalty is 10% of the entire unit value (i.e. land, improvements, personal property) which is added to the assessed value adopted by the Board. In the case of a state assessee who provides all the data required for purposes of developing the overall unit value, but does not provide sufficient data with respect to listing and describing specific operating property *needed to allocate* the unit value so determined, the penalty is limited to an additional 10% of the estimated allocated value of the specific property(s) not timely reported (rather than the entire unit value). Any penalty imposed on a state assessee for failure to provide information is capped at \$20,000,000 of assessed value which, at the general 1% tax rate, means a maximum fine of \$200,000.

The Board recently heard a state assessee appeal (Nextel) concerning a petition for reassessment and penalty abatement in which the taxpayer argued that a penalty imposed due to their failure to provide certain information should be applied to a class of their property (land value only) rather than to their entire unit value. The state assessee argued that the information which they failed to provide could be categorized as specific operating property which they did not list or describe. Thus, they argued that the penalty should be calculated only on the assessed value of this property rather than on their entire unit value. However, in this specific instance, the information lacking did not relate solely to detail needed to allocate the value so determined by the Board, which would have allowed the application of this lower penalty. The missing information also related to the ability of the Board to properly *develop the unit value* of the state assessee in the first instance. Consequently, the proper penalty was 10% of the entire unit value subject to the \$20,000,000 maximum cap.

This proposal would amend Sections 830 and 830.1 to clarify that when a state assessee fails to provide information needed to develop the state assessee's unit value, the penalty applies to the entire unit value (i.e. land, improvements, personal property) determined by the Board. It would also clarify that when a

state assessee provides information needed to develop the overall unit value, *but does not* provide sufficient detail with respect to listing and describing specific operating property for purposes of allocating the unit value so determined, the penalty is applied only to that specific portion of the property (rather than the entire unit) where information is lacking. This proposed legislation would include an uncodified statement that these amendments are declaratory of existing law.

Section 830 of the Revenue and Taxation Code are amended to read:

830. (a) If the request of the board is mailed before the lien date as defined in Section 722, the property statement shall be filed with the board by March 1, and shall be in such detail as the board may prescribe.

(b) If the request of the board is mailed on or after the first day of January following the lien date, the property statement shall be filed with the board within 60 days after the request is mailed.

(c) Except as hereinafter provided, if any person fails to file the property statement, in whole or in part, by March 1, or by that later date to which the filing period is extended pursuant to subdivision (b) or Section 830.1, a penalty shall be added to the full value of the assessment of so much of the property as is not timely reported as follows:

(1) For any part of the property statement relating to the development of the unit value of operating property, the penalty shall be 10 percent of the unit value.

(2) For any part of the property statement, not relating to the development of the unit value of operating property, that lists or describes specific operating property, the penalty shall be 10 percent of the allocated value of the property, which penalty shall be added to the unit value.

(3) For any part of the property statement that lists or describes specific nonunitary property, the penalty shall be 10 percent of the value of the property.

(4) If the failure to timely file a property statement is due to a fraudulent or willful attempt to evade the tax, a penalty of 25 percent of the assessed value of the estimated assessment shall be added to the assessment. A willful failure to file a property statement as required by Article 5 (commencing with Section 826) shall be deemed to be a willful attempt to evade the tax.

(5) No penalty added pursuant to paragraph (1), (2), (3), or (4) shall exceed twenty million dollars (\$20,000,000) of full value. In addition, if a penalty has been added pursuant to paragraph (1), (2), or (3), if a claim for refund seeking the recovery of that penalty has been filed by the state assessee contesting the penalty within three months of the due date of the second installment, and the state assessee initiates an action in the superior court within one year of the filing of the claim for refund, the state

assessee shall not be subject to any further penalties on subsequent assessments for failure to comply with any subsequent request seeking information or data with respect to the same issue as set forth in the claim for refund filed within the time limits set forth above, until the assessment year after a final decision of the court, and then only with respect to a failure to comply with a request for information with respect to assessments after a final decision of the court. For purposes of this paragraph, "same issue" means the type of information which is the subject of the disputed request for information.

(d) Any person who subscribes to the board's tax rate area change service and who receives a change mailed between April 1 and May 1, shall file a corrected statement no later than May 30 with respect to those parts of the property statement which are affected by the change.

If that person receives a change mailed after May 1, a corrected statement shall be filed no later than the 60th day following the mailing of that change.

(e) Penalties incurred for filings received after June 30 may be included with the assessments for the succeeding fiscal year.

(f) If the assessee establishes to the satisfaction of the board that the failure to file the property statement or any of its parts within the time required by this section was due to reasonable cause and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the board shall order the penalty abated, provided the assessee has filed with the board written application for abatement of the penalty within the time prescribed by law for the filing of applications for assessment reductions.

Section 830.1 of the Revenue and Taxation Code are amended to read:

830.1. Notwithstanding Section 15620 of the Government Code, the board, by order entered upon its minutes and for good cause shown, may extend the time fixed for filing portions of the property statement as follows:

(a) For any part of the property statement relating to the development of the unit value of the operating property, an extension not exceeding 45 days may be granted.

(b) For any part of the property statement, not relating to the development of the unit value of operating property, that lists or describes specific operating property, an extension not exceeding 30 days may be granted.

(c) For any part of the property statement that lists or describes specific nonunitary property, an extension not exceeding 30 days may be granted.

(d) If an extension is granted pursuant to subdivision (a), (b), or (c), an additional 15-day extension may be granted upon the showing of extraordinary circumstances which prevent the filing of the statement within the first extension.

The amendments made to Section 830 and 830.1 of the Revenue and Taxation Code by this act are declaratory of existing law.